# MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308 Phoenix, Arizona 85007 Wednesday, May 6, 2015 – 1:00 p.m.

Present:

David M. Parker

Chairman (video)

Susan Strickler Michael G. Sanders Vice Chair

Joseph M. Hennelly, Jr.

Commissioner Commissioner

Dale L. Schultz

Commissioner

Laura McGrory

Director

Andrew Wade William Warren

Chief Legal Counsel ADOSH Director

Sylvia Simpson

Chief Financial Officer

Renee Pastor

Accounting

Kara Dimas

**Commission Secretary** 

Chairman Parker convened the Commission meeting at 1:02 p.m. noting a quorum present. Also in attendance were Scot Butler, the Commission's lobbyist, and Jason Weber of Snell & Wilmer.

# Approval of Minutes of April 23, 2015 and April 30, 2015 Regular Session Minutes.

The Commission unanimously approved the Minutes as amended for the April 23, 2015 Regular Session meeting on motion of Commissioner Sanders, second of Commissioner Schultz.

The Commission unanimously approved the Minutes of the April 30, 2015 Regular Session meeting on motion of Vice Chair Strickler, second of Commissioner Hennelly.

### Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
  - 1. 2C14/15-2037 Jamrock Café & Grill, L.L.C.
  - 2. 2C13/14-1834 Silverview, LLC dba Silver View RV Resort
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  - 1. Costco Wholesale Corporation

- 2. Empire Southwest, LLC
- 3. The Salvation Army USA, Western Territory

Chairman Parker asked if any agenda items needed to be removed from the Consent Agenda. Hearing none, the Commission unanimously approved the items on the Consent Agenda on motion of Commissioner Sanders, second of Commissioner Schultz. Chairman Parker noted that Costco had reduced its experience modification (e-mod) and Commissioner Schultz commented on how quickly Costco did so.

# Discussion and/or Action regarding Legislation.

Scot Butler presented his end-of-session report and noted that all of the actions from the Legislature are now final. He stated that there are reports that the first quarter tax collections are higher than projected. Chairman Parker noted that Moody's rating agency just upgraded the State's credit rating based upon budget actions and other factors and that was good to see. Commissioner Sanders asked if the increased revenue is projected to sustain through the next quarter or two. Mr. Butler explained some difficulties with projecting corporate tax collections and how those tax revenues may fluctuate.

Chairman Parker announced that item 7 was next.

Discussion and/or Action Regarding Sunset Review of the Industrial Commission of Arizona, OSHA Review Board, OSHA Advisory Committee, Boiler Advisory Board and Employment Advisory Council.

Laura McGrory stated that the Commission has been notified of the sunset review and that the review will include the Industrial Commission, the OSHA Review Board, OSHA Advisory Committee, Boiler Advisory Board, and Employment Advisory Council. She described what will be involved with the review and preparation of a report for the Committee of Reference. She explained that even though the review of OSHA Review Board will be included, the OSHA Review Board is independent from the Commission and she forwarded the sunset review information to the Board's legal counsel. Ms. McGrory explained the time frame to complete a draft report to the Committee of Reference.

Mr. Butler described the structure of the Committee of Reference and his recommendations regarding briefing the staff analysts. He commented on the standard ten-year sunset review cycle and explained why some state agencies have been reviewed on shorter cycles.

Commissioner Schultz asked whether it would be helpful for the Commissioners to brief any members of the Committee or the Committee Chairs and Mr. Butler described some circumstances where that might be helpful.

Discussion and Action Regarding Requests to the Governor's Office for Approval Under Executive Order 2015-01 to Proceed with Rulemaking.

Ms. McGrory stated she has been attempting to obtain an update from the Governor's office regarding the status of the three pending requests. Chairman Parker noted that Federal OSHA just adopted final rules regarding confined space and the Commission may need to initiate the process with those rules. Commissioner Schultz asked about the processing of requests within the Governor's office and Ms. McGrory responded to the question.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Fox Valley Electric, Inc.

Planned

2440 W Mission Ln Ste 15

Years in Business:

Empl. Covered by inspection:

8 2

Phoenix, AZ 85021

5819 W. Buckeye Rd

Phoenix, AZ 85043

Inspection No:

Site Location:

T9350-1044274

Inspection Date:

3/04/2015

<u>SERIOUS</u> – Citation 1 - Item 1 – East Building (5819): One employee was making up electrical connections on the roof for two new evaporative coolers without the use of a guardrail system, safety net system, or personal fall arrest system to prevent an approximate 20 foot fall hazard. (29 CFR 1926.501(b)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

<u>SERIOUS</u> – Citation 1 - Item 2 – East Building (5819): One employee was not protected from falling through any of the six skylights that were approximately 120 inches in length, 36 inches wide, and approximately 20 feet above the concrete below, by a guardrail system, by use of a personal fall arrest system or by a cover secured over the holes. (29 CFR 1926.501(b)(4)(i)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

<u>SERIOUS</u> – Citation 1 - Item 3 – East Building (5819): The Company did not assure fall protection training for an employee who was exposed to a fall greater than six feet. (29 CFR 1926.503(a)(2)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

<u>SERIOUS</u> – Citation 1 - Item 4 – East Building (5819): One employee was using a ten foot Werner fiberglass A-Frame step ladder, model unknown, which did not extend 3 feet above the landing surface. (29 CFR 1926.1053(b)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

<u>SERIOUS</u> – Citation 1 - Item 5 – East Building (5819): One employee was utilizing a ten foot Werner fiberglass A-Frame step ladder, model unknown, as a means of access to an eleven foot three inch wall. (29 CFR 1926.1053(b)(4)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$7,500.00

TOTAL FORMULA AMT. - \$7,500.00

William Warren summarized the citations and proposed penalty as listed. Vice Chair Strickler referred to mounted photograph 4 and asked how that photograph establishes abatement. Mr. Warren explained that Fox Valley probably intended the photograph to show the construction project is completed, and therefore there is no longer any exposure. Vice Chair Strickler asked if guardrails have been installed around the skylights. Mr. Warren explained when guardrails are required.

Commissioner Sanders asked about the types of protective systems that could be used before anyone performs maintenance work on the roof. Mr. Warren described several methods to protect workers from falling through skylights. Commissioner Sanders asked whether ADOSH

will follow up and Mr. Warren explained that Fox Valley does not own the building and commented on its obligations after it has completed its work.

Chairman Parker commented that construction may be complete, there may no longer be any exposure, but that does not necessarily mean that the employer abated. Mr. Warren agreed, and added that the employer purchased extension ladders. Chairman Parker noted that Items 1 and 2 are both CFR1926.501(b) violations, but the obligation to protect against falls, in general, is separate from protecting employees against skylight hazards. He referred to Items 4 and 5, explained why he thought those pertained to the same hazard, and suggested the violations be grouped for purposes of the penalty with two instances verses two separate citations. Mr. Warren explained why the compliance officer had written the two violations as separate citations. Chairman Parker commented further regarding the circumstances.

Commissioner Schultz agreed and commented on the circumstances. Chairman Parker commented on grouping Items 4 and 5 with a total penalty of \$6,000.00. Chairman Parker asked if there were other questions or discussion, and hearing none, he moved approval with the following adjustment, group Items 4 and 5 as a single serious with two instances and a total penalty of \$6,000.00. Commissioner Schultz seconded the motion. The Commission unanimously approved issuing the revised citation with a total penalty of \$6,000.00.

Complaint

Years in Business:

Empl. Covered by inspection:

32

65

PMA Photometals of Arizona, Inc.

3040 N 27th Ave

Phoenix, AZ 85017

Site Location:

3040 N 27th Ave

Phoenix, AZ 85017

Inspection No:

J7272-1048198

Inspection Date: 3/23/2015

### SERIOUS - Citation 1 - Item 1 -

- a) Etch building: A written respiratory protection program was not established and implemented for employees using a Honeywell Survivair ValueAir Plus half facepiece air purifying respirator, model 302500, with a Sperian S-Series air purifying multicontaminant cartridge, model 100800, that included procedures, medical evaluation, fit testing, procedures for proper use, procedures for cleaning, training and procedures for evaluating the effectiveness of the program. (29 CFR 1910.134(c)(1)).
- b) Etch building: Employees using a Honeywell Survivair ValueAir Plus half facepiece air purifying respirator, model 302500, with a Sperian S-Series air purifying multi-contaminant cartridge, model 100800, did not have a change schedule implemented to inform them when changing of air purifying cartridges was required prior to reaching the end of the cartridge's service life. (29 CFR 1910.134(d)(3)(iii)(B)(2)).
- c) Etch building: A medical evaluation was not provided to determine an employee's ability to use a Honeywell Survivair ValueAir Plus half facepiece air purifying respirator, model 302500, while working with hazardous chemicals such as Pitt-Guard Direct-To-Rust epoxy mastic coating. (29 CFR 1910.134(e)(1)).

- d) Spray coating/painting area: Three employees were not fit tested prior to initial use of a Honeywell Survivair ValueAir Plus half facepiece air purifying respirator, model 302500, with a Sperian S-Series air purifying multi-contaminant cartridge, model 100800, when applying Pitt-Guard Direct-To-Rust epoxy mastic coating to wood roof components. (29 CFR 1910.134(f)(2)).
- e) Etch building: Employees who used a Honeywell Survivair ValueAir Plus half facepiece air purifying respirator, model 302500, with a Sperian S-Series air purifying multicontaminant cartridge, model 100800, were not trained on respiratory protection elements outlined in section (i)-(vii). (29 CFR 1910.134(k)(1)).

Div. Proposal - \$1,050.00

Formula Amt. - \$1,050.00

<u>SERIOUS</u> – Citation 1 - Item 2 – Etch Building: Employees on the die etch manufacturing line were working beneath maintenance employees who were removing and replacing roof structural components, and the manufacturing employees were not protected from falling tools or materials by protective helmets. (29 CFR 1910.135(a)(1)).

Div. Proposal - \$1,050.00

Formula Amt. - \$1,050.00

<u>SERIOUS</u> – Citation 1 - Item 3 – Prep and Etch Buildings: Three employees were performing construction activities removing, replacing, and painting roof structural components without any form of fall protection where they were exposed to a fall of 9'-4" to the ground below. (29 CFR 1926.501(b)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

<u>SERIOUS</u> – Citation 1 - Item 4 – Prep Building: Employees used a Werner 12' step ladder model NXT1A12, serial number unknown, to gain access to the roof of the Etch Building, at a height of 9'-4" from the ground below, which is not the designed use of a step ladder. (29 CFR 1926.1053(b)(4)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$5,600.00

TOTAL FORMULA AMT. - \$5,600.00

Mr. Warren summarized the citations and proposed penalty as listed. Commissioner Sanders referred to the step ladder shown in mounted photographs 11 and 12, noted that the ladder extends three feet above the upper landing surface, and the ladder, even though it is a folding ladder, is probably more stable than an extension ladder because the base is wider. He commented on whether it is appropriate to cite the employer. Mr. Warren explained why an Aframe ladder can only be used the way it was designed to be used. Commissioner Sanders stated it appears the employer attempted to comply, that the base of that step ladder is a lot wider than an extension ladder would be, and explained why he did not view this as a serious violation. Andrew Wade commented on one difference between the different types of ladders and Mr. Warren commented on the design features.

Commissioner Schultz asked how the good faith adjustment factor would be applied, noted that he agreed with Commissioner Sanders, and explained why. Mr. Warren asked if he could have a moment to look up that section of the Field Operations Manual (FOM).

Chairman Parker commented on when a good faith adjustment would be appropriate and the amount of the reduction. He suggested classifying this violation as a non-serious. Mr. Warren described his concern with the way the ladder was used. Chairman Parker said he appreciated Mr. Warren's view and explained why he thought the ladder, as it was used here, was sufficiently

stable. Mr. Warren commented on why he did not want to do anything that might be viewed as setting a precedent. Chairman Parker presented an analogy with rebar in an isolated location and citing as a technical violation. Mr. Warren commented on the gravity based penalty. Vice Chair Strickler noted that she appreciates Mr. Warren's concern, however, this decision is on the Commission side, not necessarily on the compliance side, that ADOSH would continue to cite this type of violation and would not be worried about setting a precedence and ADOSH should continue to do exactly what they are doing. She explained why this particular set of circumstances does not set a precedent. Commissioner Sanders said he appreciated the comments by Vice Chair Strickler.

Chairman Parker asked Ms. McGrory if she had any concerns. She stated that Vice Chair Strickler has articulated it correctly, and noted that simply because the Commission feels more comfortable with re-classifying this particular set of circumstances to a non-serious, doing so in this particular instance will not change how ADOSH enforces this type of violation. Mr. Warren commented on the good faith reduction as presented in the FOM. Chairman Parker and Mr. Warren discussed the different percentages and how they are applied. Chairman Parker asked if there was any reduction for prompt abatement. Mr. Wade commented on the quick fix penalty reduction and the differences between how federal OSHA and ADOSH apply that reduction. Chairman Parker summarized the application of the good faith penalty reduction.

Chairman Parker asked Mr. Warren to describe the hazard in Item 1. Mr. Warren responded to the question.

Chairman Parker stated he would like to have Item 4 classified as non-serious. He asked Mr. Warren for his recommendation on the penalty if the citation is classified as non-serious. Mr. Warren responded to the question by noting the range allowed by statute. Chairman Parker asked what he recommended for this specific citation and Mr. Warren stated he would leave the penalty amount the same. Mr. Warren responded to Ms. McGrory's question regarding the gravity based penalty for a non-serious citation. Chairman Parker explained he was asking whether it would be appropriate for this citation to have no penalty or a minimal penalty. Mr. Wade added that if Item 4 is issued with no monetary penalty, the total would be \$3,850.00.

Commissioner Sanders moved to approve the recommendation with Item 4 reclassified as non-serious with no monetary penalty so that the total amount of the penalty is \$3,850.00. Vice Chair Strickler seconded the motion and the Commission unanimously voted in favor of the motion.

Commissioner Schultz complimented Mr. Warren on the quality of the photographs.

## Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory stated that today was Arizona State Employee Recognition Day and that the Commission will be having formal ceremonies next week which will recognize Commission employees for their tenure with the state, and also recognize the employee of the year and supervisor of the year. Commissioner Sanders asked for the starting times for ceremonies. Ms. McGrory said the formal ceremony is scheduled for Tuesday at 2:00 p.m. for the Phoenix office and the Tucson office ceremony is scheduled for Wednesday at 1:00 p.m. Commissioner Sanders stated that he may be able to attend the Phoenix ceremony.

Commissioner Sanders asked about a group photograph and suggested the McCall mural would make a good backdrop. The Commissioners discussed their availability.

Chairman Parker mentioned the Commission meeting scheduled for June 18 and Ms. McGrory asked if the Commission wanted to schedule the apportionment hearing for June 18. Chairman Parker stated he has held that date open to attend in person and as long as that date works for the other Commissioners, the apportionment hearing would be scheduled for June 18. There were no comments.

Commissioner Sanders asked about the upcoming VPP events and Chairman Parker responded noting that if more than two Commissioners were going to attend, they need to let Ms. McGrory or Ms. Dimas know so that it can be noticed.

There being no further business to come before the Commission and no announcements, future scheduling of meetings, or public comment, the meeting was adjourned at 2:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

Ву

Laura McGrory, Director

ATTEST:

Kara Dimas, Commission Secretary